IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTY FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 12877 of 2002

AND

WRIT PETITION NO.18739 of 2003

WRIT PETITION NO : 12877 of 2002

Between:

Photographic Association, 101-102, Panchavati Mall,

Narayanaguda, Hyderabad, represented by R.Ranga

Rao, s/o. R.Pichaiah, Occ:Business, R/o.Hyderabad.

….. PETITIONER

AND

1. Union of India, represented by its Secretary,
Ministry of Finance, Department of Revenue,

New Delhi.

2. The Central Board of Excise and Customs,

represented by its Chairman, Revenue

Building, I.T.O., New Delhi.

3. Central Excise and Customs Department,

represented by its Commissioner, Near L.B.

Stadium, Basheerbagh, Hyderabad.

….. RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ order or direction more particularly one in the nature of Writ of Mandamus to declare that imposition of Service Tax on still photography service vide Sections, 65, 66 and 67 as substituted vide Section 137 of the Finance Act, 2001 in the Finance Act, 1994 on the gross turn over of charges of photo studios/colour labs which include the costs of the material inputs such as photography papers and chemicals accounting to 70% of the gross turn over as illegal, in violation of Articles 14 and 19 of the Constitution of India, discriminatory, arbitrary and contrary to the objects of the legislation and consequently declare that the petitioner is not liable to pay service tax on the value of material inputs as the photographic paper, chemicals accounting to the gross turn over as stipulated in Sections 65, 66 and 67 of the said Act.

Counsel for the petitioner: MR.C.PRADEEP KUMAR

Counsel for the respondents: MR.A.RAJASEKHAR REDDY (ASSISTANT SOLICITOR GENERAL)

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WRIT PETITION NO.18739 of 2003

Between

M/s. Victory Colour Lab and Studio,

a partnership firm, at H.No.7/1/59/1,

at Dharam Karan Road, Ameerpet,

Hyderabad-500016, represented by

Its Managing Partner Sri Rajinder

Jain, s/o. Sri B.L.Jain.

…..PETITIONER

And

1. The Union of India, through the

Ministry of Finance, New Delhi,

represented by its Principal

Secretary.

2. The Commissioner of Customs and

Central Excise, through the Assistant

Commissioner of Customs and Central

Excise, Service Tax Cell (Group-5),

Hyderabad-II, Commissionerate,

Room No.714, 6th Floor, L.B.Stadium

Road, Basheerbagh, Hyderabad.

…..RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue Writ of Mandamus or any other a Writ order or direction to the respondents declaring Section 67 of the Finance Act, 1994 insofar as the services consisting materials value as dominant as highly illegal and unconstitutional.

Counsel for the Petitioner: MR.K.RAJENDRAN

Counsel for the Respondents: MR.A.RAJASEKHAR REDDY (ASSISTANT SOLICITOR GENERAL)

ORAL ORDER: (per GB.J.)

Similar matter was decided by the Kerala High Court in KERALA COLOUR LAB ASSOCIATION vs. UNION OF INDIA[1] and the same was confirmed by the Supreme Court in SLP (CC) No.6811 of 2002, dated 8.1.2003. In view of this, both the Writ Petitions are to be decided accordingly.

2. The learned counsel for the petitioners now submits that in view of the Notification

bearing Nos.11/2003-Service Tax and 12/2003-Service Tax, dated 20.6.2003 issued by the Government of India the components like photographic papers, chemicals etc., which go into the Colour Lab, cannot form part of the service tax and therefore to that extent it has to be excluded.

3. We do not want to express any opinion on this aspect. Since the show cause notice had already been issued by the authorities to the petitioners, it is always open for the petitioners to file appropriate representation and the same will be considered by the authorities keeping in view the notification referred to above, if it applies to the cases of the petitioners also.

4. With the observation made above, both the Writ Petitions are disposed of. No costs.

(G.BIKSHAPATHY, J.)

31st March, 2005.

SSR (P.S.NARAYANA, J.)

To

1. The Secretary, Ministry of Finance, Department of Revenue,
Union of India, New Delhi.

2. The Chairman, Revenue, Central Board of Excise and Customs,

Building, I.T.O., New Delhi.

3. The Commissioner, Central Excise and Customs Department,

Near L.B. Stadium, Basheerbagh, Hyderabad.

4. The Principal Secretary, Union of India, through the

Ministry of Finance, New Delhi,

5. The Commissioner of Customs and Central Excise, through the
Assistant Commissioner of Customs and Central Excise, Service
Tax Cell (Group-5), Hyderabad-II, Commissionerate, Room
No.714, 6th Floor, L.B.Stadium Road, Basheerbagh, Hyderabad.

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